Syarikat Raspand (suing as a firm) v Government of the State of Sabah

HIGH COURT (KOTA KINABALU) — SUIT NO CSK 22–37 OF 1997
SULONG MATJERAIE J
22 JULY 2005

Trade and Industry — Forestry — Possession of logs without lawful authority — Seizure of imported logs — Whether Forest Enactment (Sabah) apply to logs imported from Indonesia — Whether seizure wrongful — Forest Enactment (Sabah) ss 37A & 40

The plaintiff was engaged in trading activities involving the import of logs and their subsequent export and or sale of the imported logs to local sawmills in the district of Tawau, in the State of Sabah. The Ministry of Primary Industries Malaysia had approved the plaintiffs' application to import 100,000 cubic meters (m3) of logs for sale to local sawmills in Tawau as well as to import 50,000 m3 of logs for exporting sale. On 18 January 1997 the defendant seized 3,056 logs comprising of 980 logs which were in the process of being loaded onto a vessel and a further 2,076 logs which were still at Wallace Bay, Tawau. At the time of the said seizure, the 980 logs measured 7,072.44 m3 was valued at RM2,263,180.80 at the material time. At the time of the said seizure, the 2,076 logs measured 15,805.20 m3 was valued at RM6,005,976 at the material time. At the date of the said seizure, the plaintiff still had an unexhausted quota of 67,830 m3 logs to be imported to supply the local sawmills in Tawau with a prevailing market value of RM400 per m3 and an unexhausted quota of 36,340 m3 logs to be imported for the purpose of exporting them with a prevailing market value of RM623 per m3.

It was also agreed in the statement of agreed facts that the 980 logs measuring 7,072.44 cubic meters was valued at RM2,263,180.80 at the time of the seizure and the 2,076 logs measuring 15, 805.20 cubic meters was valued at RM6,005,976 at the time of seizure making a grand total of RM8,269,156.80. On 31 March 1997, the Tawau magistrate's court ordered the 3,056 logs seized by the defendant to be returned to the plaintiff as being entitled to possession thereof and this was done by the defendant. The parties agreed that the issue to be determined in this case was confined to the question of liability only.

Held:

(1) Section 37A of the Forests Enactment would apply only if the logs originated from Sabah and the Forestry Department had reason to suspect the commission of forest offence in relation to those logs. But in this instant case, the Forestry Department knew from day one that those logs were not from Sabah and that in itself rebuts any reasonable or probable cause they had to seize the impugned logs (see para 32).

(2) Section 37A did not apply for another reason, ie that the seizure was made without reasonable or probable cause because the Forestry Department knew that the impugned logs did not originate from Sabah. In essence, if they knew that the logs did not originate from Sabah, the Forestry Department had no business seizing the impugned logs (see para 33).

(3) The defendant did not deny that the seizure was wrongful. They failed to challenge the facts of the evidence. Therefore based on the uncontroverted facts, it was a clear case of wrongful seizure of the impugned logs by the defendant. From the perusal of the documents shown to the court, it was also undisputed that the plaintiff had a legitimate claim on the impugned logs. The impugned logs had totally deteriorated and attempts to mitigate the loss were undertaken by the plaintiff to get the original buyers to take the impugned logs, but they refused completely. Therefore they had to discard them as total loss. As such the plaintiff should be entitled to damages to the extent of the exact value of impugned logs and all expenses incurred costs, charges and loss of future expectation from the defendant (see paras 37 and 38).

(4) Section 40 of the Forest Enactment would only apply as it talked about forest produce or other property detained under this Enactment. The Enactment did not empower or gave jurisdiction to its officers to detain forest produce from outside Sabah. Hence, s 40 of the Forests Enactment had no application. The Forestry Department was fully aware that the logs did not come from Sabah but Indonesia. They knew they had no power to seize those impugned logs, yet they proceeded to do just that. That constituted gross negligent if not total recklessness on the part of the officers concerned (see para 40).

[**Bahasa Malaysia summary**

Plaintif terlibat dalam aktiviti-aktiviti perniagaan mengimport balak dan kemudian mengeksport atau menjual balak-balak yang diimport kepada kilang papan tempatan di daerah Tawau, Negeri Sabah. Kementerian Perusahaan Utama Malaysia telah meluluskan permohonan plaintif untuk mengimport 100,000 meter padu (m3) balak untuk dijual kepada kilang papan tempatan di Tawau serta untuk mengimport 50,000 m3 balak untuk tujuan dieksport. Pada 18 Januari 1997 defendan telah merampas 3,056 balak di mana 980 balak dalam proses dimuatkan ke atas kapal dan 2,076 balak lagi masih berada diWallace Bay, Tawau. Pada masa rampasan itu, 980 balak yang berukuran 7,072.44 m3 itu berharga RM2,263,180.90 pada masa matan. Pada masa rampasan itu, 2,076 balak yang berukuran 15,805.20 m3 itu berharga RM6,005,976 pada masa matan. Pada tarikh rampasan itu plaintif masih memegang kuota tidak diguna sebanyak 67,830 m3 balak untuk diimport dan dibekalkan kepada kilang papan tempatan di Tawau pada harga pasaran

sebanyak RM400 setiap m3 dan kuota tidak diguna sebanyak 36,340 m3 balak untuk diimport dan dieksport semula pada harga pasaran sebanyak RM623 setiap m3.

Ia telah dipersetujui dalam pernyataan persetujuan fakta-fakta bahawa 980 balak berukuran 7,072.44 meter padu dinilai pada RM2,263,180.80 pada masa rampasan dan 2,076 balak berukuran 15, 805.20 meter padu telah dinilai pada RM6,005,976 pada masa rampasan berjumlah besar RM8,269,156.80. Pada 31Mac 1997, mahkamah magistret Tawau memerintahkan 3,056 balak yang dirampas oleh defendan dipulangkan kepada plaintif yang berhak kepada milikan balak-balak itu dan ini pun dilakukan oleh defendan. Pihak-pihak menyetujui bahawa isu kes ini hanya berhubung dengan liabiliti.

Diputuskan:

(1) Seksyen 37A Enakmen Hutan hanya mempunyai aplikasi sekiranya balak-balak itu berasal dari Sabah dan jabatan perhutanan mempunyai sebab untuk mencurigai berlakunya satu kesalahan terhadap perhutanan berhubung dengan balak-balak itu. Tetapi dalam kes ini, jabatan perhutanan tahu dari hari yang pertama bahawa balak-balak itu bukan berasal dari Sabah dan fakta ini membangkang sebarang sebab yang munasabah atau berkemungkinan untuk merampas balak-balak itu (lihat perenggan 32).

(2) Seksyen 37A tidak digunakan atas sebab yang lain iaitu bahawa rampasan itu telah dibuat tanpa sebab yang munasabah atau berkemungkinan kerana jabatan perhutanan tahu bahawa balak-balak itu tidak berasal dari Sabah. Yang penting, sekiranya mereka tahu bahawa balak-balak itu tidak berasal dari Sabah, jabatan perhutanan tiada hak untuk merampas balak-balak itu (lihat perenggan 33).

(3) Defendan tidak menafikan bahawa rampasan itu salah. Mereka gagal untuk menentang fakta keterangan. Oleh itu berdasarkan fakta-fakta yang tidak ditentang, adalah jelas bahawa kes ini adalah kes rampasan salah balak-balak itu. Daripada penelitian dokumen-dokumen yang dibawa ke hadapan mahkamah, ia juga tidak ditentang bahawa plaintif mempunyai tuntutan yang sah ke atas balak-balak itu. Balak-balak itu telah rosak dan langkah-langkah telah diambil oleh plaintif untuk mengurangkan kerugian dengan menyuruh pembeli asal untuk membeli balak-balak itu tetapi mereka menolak. Oleh itu ia telah ditolak sebagai kerugian keseluruhan. Oleh itu plaintif sepatutnya berhak kepada ganti rugi sebanyak nilai balak-balak itu serta semua perbelanjaan, kos, caj dan kerugian masa depan daripada defendan (lihat perenggan 37 dan 38).]

(4) Seksyen 40 Enakmen Hutan hanya digunakan kerana ia membincangkan tentang hasil hutan dan hartanah lain yang ditahan di bawah Enakmen ini. Enakmen tersebut tidak memberi kuasa kepada pegawai-pewainya

untuk menahan hasil hutan dari luar Sabah. Jesteru itu, s 40 Enakmen Hutan tersebut tidak terpakai. Jabatan Perhutanan peka yang balak-balak tidak datang daripada Sabah tetapi Indonesia. mereka mengetahui yang mereka tiada kuasa untuk merampas balak-balak yang dipersoalkan, namun telah berbuat demikian. Ia telah membentuk kecuaian melampau jika tidak sikap melulu di pihak pegawai-pegawai berkenaan (lihat perenggan 40).]

Notes

For a case on possession of logs without lawful authority, see 12 *Mallal's Digest* (4th Ed, 2002 Reissue) para 1623.

Legislation referred to

Civil Law Act 1956 s 11
Forestry Enactment 1968 (Sabah) ss 36, 37, 37A, 40

Sugumar Balakrishnan (Sugumar & Co) for the plaintiff.
Mohd Salfurrazee Hussin (Jabatan Peguam Besar Negeri) for the defendant.

Sulong Matjeraie J:

[1] At all material times, the plaintiff was engaged in trading activities involving the import of logs and their subsequent export and or sale of the imported logs to local sawmills in the district of Tawau, in the State of Sabah.

[2] The following are the statements of agreed facts of both parties:

(1) At all material times, the Ministry of Primary Industries Malaysia had approved the plaintiffs application to import 100,000 cubic meters (m3) of logs for sale to local sawmills in Tawau as well as to import 50,000 m3 of logs for exporting sale;

(2) On 18 January 1997 the defendant seized 3,056 logs comprising of 980 logs which were in the process of being loaded onto the vessel MV ABLE HELSMAN and a further 2,076 logs which were still at Wallace Bay, Tawau;

(3) At the time of the said seizure, the 980 logs measured 7,072.44 m3 which was valued at RM2,263,180.80 at the material time;

(4) At the time of the said seizure, the 2,076 logs measured 15,805.20 m3 which was valued at RM6,005,976 at the material time;

(5) At the date of the said seizure, the plaintiff still had an unexhausted quota of 67,830 m3 logs to be imported for the purpose of supplying to local sawmills in Tawau with a prevailing market value of RM400 per m3;

(6) At the date of the said seizure, the plaintiff still had an unexhausted quota of 36,340 m3 logs to be imported for the purpose of exporting them with a prevailing market value of RM623 per m3;

(7) On 31 March 1997 the Tawau Magistrate's Court ordered the 3,056 logs to be returned to the Plaintiff as being entitled to possession thereof;

(8) On 1 April 1997 the defendant returned to the plaintiff the said 3,056 logs.

[3] From these statements of agreed facts three significant points need to be highlighted:

(1) At the date of the said seizure, the plaintiff still had an unexhausted quota of 67,830 m3 logs to be imported to supply the local sawmills in Tawau with a prevailing market value of RM400 per m3 and an unexhausted quota of 36,340 m3 logs to be imported for the purpose of exporting them with a prevailing market value of RM623 per m3;

(2) It was also agreed in the statement of agreed facts that the 980 logs measuring 7,072.44 cubic meters was valued at RM2,263,180.80 at the time of the seizure and the 92,076 logs measuring 15,805.20 cubic meters was valued at RM6,005,976 at the time of seizure making a grand total of RM8,269,156.80;

(3) On 31 March 1997, the Tawau Magistrate's Court ordered the 3,056 logs seized by the defendant to be returned to the plaintiff as being entitled to possession thereof and this was done by the defendant on 1 April 1997.

HEARING BEFORE YA DATO'AZHAR MA'AH

[4] This case was initially heard by YA Dato' Azhar Ma'ah on 17 November 1999. In order to expedite the conclusion of this case, both parties agreed that I should continue with the hearing of this matter. At the hearing before me on 17 March 2004, I directed both counsel for each party to check the transcript of the notes of proceedings recorded and made under the hands of YA Dato' Azhar Ma'ah who had been transferred to Peninsula Malaysia. Both parties were required to give their approval or otherwise on the correctness of the transcript made. On 26 March 2004 both parties accepted that the transcript was a proper and right record of the earlier proceedings before YA Dato' Azhar Ma'ah, although learned counsel for the defendant placed a condition by reserving its right to recall and cross examine the last witness of the plaintiff En Abdul Rasad bin Adam (SP6). This was agreed to by the plaintiff and was therefore allowed by the court. Consequently En Abdul Rasad bin Adam (SP6) was, with the consent of the learned counsel for the

defendant, recalled and underwent the due process of examination-in- chief, cross examination and re-examination by both counsel. The plaintiff called two other witnesses, PW7 — Haryanto Kwan, holder of Indonesian Passport No K929588 from Tarakan, Indonesia, and PW8 Mr Ang Cheng Guan a Singaporean holder of Singapore Identity Card No S 120173IF. The defendant on the other hand called one witness only in the person of Encik Sam Mannan @ Sham Mannan, Director of Forestry, Sabah at Sandakan.

DETERMINATION OF LIABILITY

[5] For the purpose of this judgment the parties hereto agreed that the issue to be determined in this case is confined to the question of liability only. The quantum payable, if any, will be determined by the Registrar.

[6] It was the submission of the learned counsel for the plaintiff, MrSugumar Balakrishnan that for the purpose of his submission, the plaintiff will only confine their claim to the 3,056 logs seized by the defendant on 18January 1997. It is also an agreed fact that the Ministry of Primary Industries Malaysia had approved the plaintiffs application to import 100,000 cubic meters of logs for sale to local sawmills and a further 50,000 cubic meters of logs for the purpose of export. It is pursuant to this approval that the plaintiff imported 3,056 logs (the 'impugned logs') from Indonesia.

[7] The evidence of DSP Joseph Vim Fung Ming (SP2), Ketua Cawangan Commercial Crime from the Police Headquarters, Kota Kinabalu who carried out the investigation on behalf of the Police at the request of the Forestry Department and the evidence of Awang Tengah bin Awang Atnin (SP3) who was at the material time the Director of Forestry Department, Sabah clearly show that the impugned logs originated from Indonesia. SP3 who had worked in the Forestry Department for 27 years testified as follows at page 4 of the Notes of Proceeding:

> *Sebelum* 18 January 1997 Jabatan Perhutanan *tahu* log-log berkenaan adalah *berasal* dari *Indonesia.* (Emphasis added.)

[8] The defendant neither cross examines nor challenges this piece of evidence. SP3 explained during cross examination that the bigger size logs coupled with their superior quality indicate that those logs were not from Sabah as the logs from nearby area in Sabah were inferior in quality. Although some logs were less than 20 feet, they were bigger in size and such characteristic suggests that they originate from Indonesia where the common method of timber operation is by way of 'kuda-kuda' (hand logging). Further it was also the testimony of SP3 that the Security Officer in Forestry Department confirmed that the logs originated from Indonesia.

[9] There was also the unrebutted history that the plaintiff had been importing logs from Indonesia and Forestry Department inspecting those

logs for which they were paid fees. SP3 further testified that under the Forest Enactment 1968 the Forestry Department has no jurisdiction or power to seize logs which did not originate from Sabah. It is purely a law to regulate forestry matters in respect of logs originating from Sabah. It was the contention of the plaintiff therefore that the seizures of logs by the Sabah Forestry Department/or its officers was wrongful, done maliciously and or fraudulently and or done in gross negligence. Taken as a whole, it was the submission of the learned counsel for the plaintiff that on 18 January 1997 the Forestry Department could not have any reasonable suspicion that the impugned logs have come from Sabah. The Forestry Department knew very well that before 18 January, 1997 that the impugned logs did not originate from Sabah. They could not invoke the powers under the Forestry Enactment 1968 as it has no application to logs that originated from outside the country. Learned counsel for the plaintiff submits further that the jurisdiction and powers in relation to logs originating from outside the country is vested with the Royal Customs & Excise Department ('the Customs Department').

[10] SP4 Sabardin bin Lahabim, Penguasa Kastam, Tawau, from the Customs Department said that the plaintiff had obtained the requisite licence from the Customs Department to import the impugned logs from Indonesia. He also testified that the plaintiffs application to transship 980 logs out of the 3065 logs had been approved by the Customs Department. SP4 had also testified that, at the material time, there was no law imposed in Malaysia that prohibits the import of logs from Indonesia. SP5 – Abdul Hanan bin Alang Endut, Setiausaha Bahagian Industri Kayu Kayan, Ministry of Primary Industries, Malaysia testified that the plaintiff had the requisite licence to import the impugned logs. He testified further that for transshipment and import of logs there was no need for the plaintiff to register with the Lembaga Perindustrian Kayu Malaysia or to obtain any licence from them.

[11] Accordingly, SP2 told the court that a thorough investigation was carried out by the Police which lasted for two months. The investigation papers were sent to the Attorney General Chambers in Kuala Lumpur where it was concluded that no offences under any law was disclosed. In the course of its investigation, it was disclosed that the impugned logs which came from Indonesia were on transshipment to foreign countries. It was the testimony of SP2 that as the impugned logs were not from Sabah, the seizure by the Forestry Department on 18 January 1997 was wrongful.

[12] As there was no offence being committed in relation to the impugned logs, the magistrate in Tawau on 31 March 1997 ordered they be returned to the plaintiff. This was done on 1 April 1997.

[13] Learned counsel for the plaintiff further submitted that it was pertinent to note that none of the evidence from the various witnesses were challenged or even cross-examined in relation to whether there was any

offence committed. As there was no challenge at all the defendant cannot go behind the investigation. Learned counsel submits that the defendant had never denied that the seizure had been wrongful. The defendant never challenged the facts of the evidence. Therefore based on the uncontroverted facts, it was the submission of the plaintiff that this was a clear case of wrongful seizure of the impugned logs.

QUANTUM OF DAMAGES

[14] Under this head, the plaintiff submits that there was unchallenged evidence that the conditions of the impugned logs had totally deteriorated. The plaintiff had attempted to mitigate their loss by getting the original buyers to take the impugned logs but as seen from the testimonies of PW7 Haryanto Kwan, and PW8 Ang Cheng Guan they refused. Local buyers were also sought but they too refused.

[15] As the logs were seized and in the custody of the Forestry Department for two months and 13 days before being released, testimonies were given in court as to their conditions. They have deteriorated and the plaintiff had no choice but to discard the impugned logs as total loss. Since the plaintiff have suffered total loss in relation to the impugned logs learned counsel submitted that they are entitled to the value of these logs, which value has been agreed as RM8,269,156.80.

[16] Learned counsel for the plaintiff submits further that the plaintiff had no wish to profit from this unfortunate incident, hence their decision to abandon all other claims. The plaintiff therefore pray that judgment be entered against the defendant for the sum of RM8,269,156.80 with interests at a rate of 8% per annum from 18 January 1997 until full payment and costs.

SUBMISSIONS OF LEARNED COUNSEL FOR THE DEFENDANT

[17] Learned counsel for the defendant, En Halim Hanapia at the outset submitted that it was not an agreed fact that the impugned logs originated from Indonesia. To him it was a mere assumption based on the testimony of the plaintiffs witnesses as at the time when the impugned logs were detained and seized, they were within the vicinity of Tawau waters. Therefore it was reasonably believed that the impugned logs were in fact of Sabah origin. The defendant will rely on the provision of ss 37A and 40 of the Forest Enactment 1968 against the plaintiffs claim. Section 37A reads:

> No person shall in any proceedings before any court in respect of the seizure of anything seized in the exercise or purported exercise of the powers conferred under this Enactment be entitled to the costs of such proceedings or to any damages or other relief other than an order for the return of such thing or the payment of their value unless seizure was made without reasonable and probable cause.

[18] Learned counsel further argued that s 40 of the Forest Enactment, 1968 provides for the non liability of Government officers and members of the armed forces. Section 40 reads:

> The Government, forest officers, police officers and members of the armed forces shall not be held responsible for any loss or damage which may occur in respect of any forest produce or other property while detained by, or otherwise in the custody of, any such officer under this Enactment or the rules, or in respect of any timber taken into possession under section 26 of this Enactment, unless such loss or damage arose out of malicious, fraudulent or grossly negligent act of any such officer.

[19] Learned counsel adds that whether reasonable ground of suspicion really existed would entirely be a matter within the domain of the officers, forestry officers' knowledge. He submits that there were circumstances that formed this reasonable suspicion in the mind of those forestry officers such as the specie of the logs found in the plaintiffs possession were the normal species from Sabah; the logs bear no serial numbers.

[20] The custody of the logs was handed over to the police on 4 February 1997 and that, submits learned counsel for the defendant, signified the end of the defendant's role in the detention of the logs. The fact that the logs were returned to the plaintiff on 1 April 1997 did not negate the fact that initial reasonable belief or suspicion that the act of the defendant was based upon and rightly so. Therefore the defendant shall be entitled to rely upon the protection of the appropriate provision and prayed for the action of the plaintiff to be struck out and dismissed with costs.

THE FINDINGS OF THE COURT

[21] The plaintiffs claim as contained in the writ of summons at encl 2 dated 8 April, 1997 was for a sum of RM113,904,016 or alternatively for damages to be assessed, and interest on the sum of RM8,266,515 at the rate of 8% per annum from the 18th day 10 of January 1997 to the date of judgment pursuant to s 11 of the Civil Law Act 1956, statutory interests on the sums adjudged sum at the rate of 8% per annum from the date of judgment to the date of full payment, costs and other reliefs deem fit by the court.

[22] It has been seen earlier that the plaintiff was engaged in trading activities involving the imports and exports of logs to local sawmills in the district of Tawau. Such activities had been conducted with the approval of the Ministry of Primary Industries Malaysia pursuant to the letters of approval to import 100,000 m3 logs for sale to the local sawmills in Tawau as well as to import 50,000 m3 of logs for export. These letters of approval were copied to the Director of Forestry, Forestry Department Sabah, Sandakan.

[23] On 18 January 1997 the Sabah Forestry Department were alleged by the plaintiff to have wrongfully seized their 2,076 logs. According to the

evidence of SP4, the plaintiff has an import permit at the exhibit at p 12B issued on 3 January 1997 by the Lembaga Perindustrian Kayu Malaysia (LPKM) on behalf of Customs Department. The import permit was valid up to 1 March 1997. The logs according to SP4 were imported from Indonesia which he testified at that material time was not prohibited by Malaysia. The documents at the exhibit from pp 13B to 16B are transshipment documents. The plaintiff applied to transship 980 logs and was duly approved by the Customs Department. These documents, according to SP4 allow the applicant to transship logs brought in from outside Malaysia and to be transshipped to another country.

[24] According to SP4, in order to export logs one must have a licence to export, issued by LPKM whereas the transshipment permit was issued by Customs Department. It was the evidence of SP4 that on 18 January 1997, the plaintiff had both the proper import licence as well as the transshipment permit for the export of the impugned logs. SP4 supervises the examination of the impugned logs to ensure that they complied with the certified measurement and markings. It was also the testimony of SP4 that after 18 January 1997 Customs Department made an internal inquiry concerning this matter. The finding made was that there was nothing illegal and the entire transaction was in order.

[25] As the parties have agreed that at the material time the Ministry of Primary Industries Malaysia had approved the plaintiffs application to import 100,000m3 for sale to local sawmills and 50,000m3 for export, there is no room for any of the parties to challenge the testimony of SP5.

[26] It is the contention of the plaintiff that the defendant has no lawful authority under the Sabah Forest Enactment 1968 to seize the impugned logs since they knew or ought to have known that the impugned logs did not originate from Sabah. The testimony of SP3 is extremely clear and relevant and is reproduced hereunder:

> Sebelum 18 Januari 1997 Jabatan Perhutanan tahu log-log berkenaan adalah berasal dari Indonesia.
>
> Jabatan Perhutanan pada tarikh tersebut mempunyai cukup keterangan babawa log-log berkenaan bukannya dari Sabah.
>
> Saya telah bertugas dengan Jabatan Perhutanan selama 27 tahun.
>
> Di bawah Enakmen Perhutanan, Jabatan Perhutanan tidak mempunyai kuasa untuk merampas log-log yang bukan berasal dari Sabah.
>
> Bagi log-log yang datang dari luar negeri agency yang berkuasa untuk merampasnya ialah Jabatan Kastam.
>
> Saya setuju apabila Jabatan Perhutanan merampas log-log pada 18 Januari 1997 perbuatan ini adalah salah disisi undang-undang.

[27] And on cross examination, SP3 said inter-alia as follows: **A**

> Pada 20 November 1997 saya telah ke Tawau tempat kejadian. Dari perbincangan dengan pegawai-pegawai perhutanan Wilayah Tawau, kami berpendapat bahawa log-log tersebut bukan berasal dari Sabah. Bentuk-bentuknya adalah besar dan mutunya adalah juga tinggi. Setahu kami di kawasan-kawasan yang berdekatan tidak ada balak-balak yang bermutu sedemikian. **B**
>
> Ada juga balak balak tersebut yang pendek-pendek kurang dari 20 kaki tetapi juga besar- besar. Ini menunjukkan balak itu datang dari operasi kuda-kuda (hand-logging). Ciri ini adalah 'common' di Indonesia.
>
> Semua balak berkenaan telah disahkan oleh pegawai keselamatan Jabatan Perhutanan bahawa log-log berkenaan datang dari Indonesia. **C**

[28] From the testimony of SP3 and from the argument of the defendant, it was not disputed that the Forest Enactment cannot be applied to logs that originated from outside Sabah. The said testimony would point to the direction that the impugned logs originated from Indonesia. This evidence, **D** coupled with the approval forms by the Customs Department would show that the impugned logs are indeed from Indonesia. The testimonies of SP4 and SP5 are undisputed and uncontroverted. These lend support and corroborate the testimony of the plaintiff having all the requisite licence and the required documents for the importation and transshipment of the **E** impugned logs. The other important aspect of their testimonies is that for transshipment of logs no import and export licences are necessary. Furthermore at the material time there was no restriction or law that prohibits the importation of logs from Indonesia.

[29] It was the testimony of SP6 Abdul Rashad bin Adam that despite **F** showing the said licence and permit to DW1 Sam Mannan on 18 January 1997 the impugned logs were still seized by Forestry Department.

[30] It is to be noted that the evidence of SP3 the then Director of Forestry Sabah that the impugned logs were from Indonesia. This was not challenged and uncontroverted. The evidence of SP2 the investigating officer, confirmed **G** that after their investigation they found that no offence had been disclosed and that the seizure of the impugned logs on 18 January 1997 *was wrongful* and were accordingly returned to the plaintiff. The impugned logs came from Indonesia. All these had not been challenged by the defendant. Based on the uncontroverted testimonies of the witnesses for the plaintiff, I therefore **H** make a finding that the impugned logs came from Indonesia.

[31] The witnesses for the plaintiff were also not cross-examined in relation to whether there was any offence committed. As there was no challenge at all, the defendant cannot go behind the investigation. Furthermore, no report on what sort of investigation had been done by the Forestry Department over **I** the matter was ever mentioned or brought to the fore to show what offence or offences, if any, had been committed by the plaintiff.

[32] DW1 on the other hand informed the court that on 17 January 1997, he attended a meeting of Jawatan Kuasa Perlaksanaan Dasar Perhutanan Negeri in Kota Kinabalu chaired by YAB Chief Minister on the issue of log transhipment via Wallace Bay and the entry of logs into Sabah from Indonesia. It was the evidence of DW1 that YAB Chief Minister instructed the Forestry Department to attend to the matter and to detain vessels or logs concerned for further investigation. DWI further testified that YAB Chief Minister directed him to go to Tawau to check, verify and detain *any ship and logs* in Wallace Bay which were involved in transshipments and logs for export. Accordingly DW1 seized the logs of the plaintiff. After seizing the logs one would have thought the Forestry Department would have applied the provisions of the Forests Enactment as a guide to take appropriate action but DW1 further testified that YAB Chief Minister directed Director of Forestry (KPPW/S) to immediately lodge a police report.

[33] Learned counsel for the defendant submits that the defendant can seek protection under ss 37 and 40 of the Forests Enactment 1968. It was argued by the defendant that under s 36 of the Forest Enactment 1968 the seizure was rightful since there exists reasonable suspicion from the circumstances that the logs are of same type as those species found in Sabah and that there were no markings found thereon. Somehow upon investigation no offence under the said Enactment had been committed. Despite those findings, the defendant continued to detain the impugned logs until a Police report was made on 27 January 1997 and on 4 February 1997 when the impugned logs were surrendered to the police, thus ending their tasks. The reason given appears to be for further investigation but as to whether such act was necessary or legitimate in the circumstances of the case was never explained by the defendant.

[34] Section 37A of the Forests Enactment would apply only if the logs originated from Sabah and the Forestry Department has reason to suspect the commission of forest offence in relation to those logs. But in this instant case, the Forestry Department knew from day one that those logs were not from Sabah and that in itself rebuts any reasonable or probable cause they have to seize the impugned logs. The important phrase in this provision is '… in the exercise or purported exercise of the powers conferred under this Enactment…' From start to end, the Forestry Department did not have the power or jurisdiction. Hence, the Enactment has no application to the facts of this case.

[35] Quite apart from the provisions, the evidence presented to the Court would suggest that s 37A does not apply for another reason, ie that the seizure was made without reasonable or probable cause because on the authority of SP3, the then Director of Forestry, the Forestry Department knew before 18January 1997 that the impugned logs did not originate from Sabah. In essence, if they knew that the logs did not originate from Sabah, the Forestry Department has no business seizing the impugned logs.

[36] On s 40 of the Enactment, the same argument would apply as it talks about forest produce or other property detained under this Enactment. The Enactment does not empower or give jurisdiction to its officers to detain forest produce from outside Sabah. Hence, s 40 of the Forests Enactment has no application. The Forestry Department is fully aware that the logs did not come from Sabah but Indonesia. They knew they have no power to seize those impugned logs, yet they proceeded to do just that. That in my view constitutes gross negligent if not total recklessness on the part of the officers concerned.

[37] After pursuing the testimonies of the witnesses, the documents produced, I am of the view that the Forests Enactment 1968 does not apply to logs that came from outside Sabah. No protection is available under the provisions of ss 37 and 40 of the Forests Enactment to deny the claim of the plaintiff. As testified by SP3 seizure of logs from outside the country would lie with the Customs Department. With respect, I agree.

[38] Now that since the Customs Department has the jurisdiction to seize those impugned logs, why in the first place did the Forestry Department fail to refer the case and surrender the logs to them. No such action was made by the Forestry Department from 18 January 1997 to 4 February 1997 when DW1 testified that he handed over the 3,056 logs to the police. There was also no report on what form of investigation had been done by the Forestry Department over the matter. Again despite having the Forests Enactment to guide the Director and its officers in undertaking their work, the Director as testified by DW1 acted under the instruction/direction of YAB Chief Minister to refer the matter to the police for wider investigation. Unfortunately, to me such an act shows a gross negligent on the part of the defendant. It is obvious that the seizure of the impugned logs was made without justification or without any just or reasonable cause.

[39] It is obvious that the defendant never deny that the seizure was wrongful. They failed to challenge the facts of the evidence. Therefore based on the uncontroverted facts, it is a clear case of wrongful seizure of the impugned logs by the defendant. From the perusal of the documents shown to the court, it is also undisputed that the plaintiff had a legitimate claim on the impugned logs.

[40] Finally on the question on the quantum of damages, I am of the view that since there was unchallenged evidence as to the condition of the impugned logs upon their being returned to the plaintiff. The impugned logs have totally deteriorated and attempts to mitigate the loss were undertaken by the plaintiff to get the original buyers to take the impugned logs, but they refused completely. Therefore they had to discard them as total loss. As such the plaintiff should be entitled to damages to the extent of the exact value of impugned logs and all expenses incurred costs, charges and loss of future expectation from the defendant.

[41] The plaintiff however had been very reasonable to confine their claim to the value of the logs plus interest of 8% per annum from 18 January 1997 until full payment pursuant to s 11 of the Civil Law Act 1956 and costs.

[42] At the beginning of this trial the parties have indicated that all they wanted to be determined by this court is the question of liability. That appears to remain true and that the question of quantum will be determined by the Registrar. In the light of what has been agreed to by the parties to this proceeding and based on the submissions of both counsel together with the authorities filed, as well as to what I have discussed earlier, I find that the defendant is liable to the plaintiff and that the plaintiff is therefore entitled to damages to the exact value of the impugned logs seized with interests at a rate of 8% per annum from 18 January 1997 until full payment pursuant to s 11 of the Civil Law Act 1956 and costs to be taxed.

Order accordingly.

Reported by Peter Ling